

AMENDED IN SENATE MAY 5, 2015
AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 676

Introduced by Senator Cannella

February 27, 2015

An act to amend Sections 312.3, ~~502.01, and 647~~ *and 502.01* of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

SB 676, as amended, Cannella. Disorderly conduct: invasion of privacy.

Existing law provides that a person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct, a misdemeanor.

~~This bill would recast those provisions to provide that a person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the person distributing the image knows or should know that the depicted person had a reasonable expectation that the image would remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress, is guilty of disorderly conduct.~~

~~The bill would provide additional exceptions to the prohibition against that distribution.~~

~~By expanding the definition of an existing crime, this bill would impose a state-mandated local program.~~

Under existing law, matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined, and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to a petition for forfeiture brought in the county in which the matter is located. Existing law provides for forfeiture by a defendant of illegal telecommunications equipment, or a computer, computer system, or computer network, and any software or data that was used in committing specified crimes, including depiction of a person under 18 years of age personally engaging in or personally simulating sexual conduct.

~~This bill would apply those forfeiture provisions to the new provisions of disorderly conduct described above, and to the existing provisions violations of disorderly conduct related to invasion of privacy, as provided. privacy, as specified.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 312.3 of the Penal Code is amended to
- 2 read:
- 3 312.3. (a) Matter that depicts a person under the age of 18
- 4 years personally engaging in or personally simulating sexual
- 5 conduct as defined in Section 311.4, or that is obtained or
- 6 distributed in violation of subdivision (j) of Section 647 and that
- 7 is in the possession of any city, county, city and county, or state
- 8 official or agency is subject to forfeiture pursuant to this section.
- 9 (b) An action to forfeit matter described in subdivision (a) may
- 10 be brought by the Attorney General, the district attorney, county
- 11 counsel, or the city attorney. Proceedings shall be initiated by a

1 petition of forfeiture filed in the superior court of the county in
2 which the matter is located.

3 (c) The prosecuting agency shall make service of process of a
4 notice regarding that petition upon every individual who may have
5 a property interest in the alleged proceeds. The notice shall state
6 that any interested party may file a verified claim with the superior
7 court stating the amount of their claimed interest and an affirmation
8 or denial of the prosecuting agency's allegation. If the notice cannot
9 be given by registered mail or personal delivery, the notice shall
10 be published for at least three successive weeks in a newspaper of
11 general circulation in the county where the property is located. All
12 notices shall set forth the time within which a claim of interest in
13 the property seized is required to be filed.

14 (d) (1) Any person claiming an interest in the property or
15 proceeds may, at any time within 30 days from the date of the first
16 publication of the notice of seizure, or within 30 days after receipt
17 of actual notice, file with the superior court of the county in which
18 the action is pending a verified claim stating his or her interest in
19 the property or proceeds. A verified copy of the claim shall be
20 given by the claimant to the Attorney General or district attorney,
21 county counsel, or city attorney, as appropriate.

22 (2) If, at the end of the time set forth in paragraph (1), an
23 interested person has not filed a claim, the court, upon motion,
24 shall declare that the person has defaulted upon his or her alleged
25 interest, and it shall be subject to forfeiture upon proof of
26 compliance with subdivision (c).

27 (e) The burden is on the petitioner to prove beyond a reasonable
28 doubt that matter is subject to forfeiture pursuant to this section.

29 (f) It is not necessary to seek or obtain a criminal conviction
30 prior to the entry of an order for the destruction of matter pursuant
31 to this section. Any matter described in subdivision (a) that is in
32 the possession of any city, county, city and county, or state official
33 or agency, including found property, or property obtained as the
34 result of a case in which no trial was had or that has been disposed
35 of by way of dismissal or otherwise than by way of conviction
36 may be ordered destroyed.

37 (g) A court order for destruction of matter described in
38 subdivision (a) may be carried out by a police or sheriff's
39 department or by the Department of Justice. The court order shall
40 specify the agency responsible for the destruction.

(h) As used in this section, “matter” means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. “Matter” also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip.

(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

SEC. 2. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) “Property subject to forfeiture” means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) “Sentencing court” means the court sentencing a person found guilty of violating or conspiring to commit a violation of subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) “Interest” means any property interest in the property subject to forfeiture.

(4) “Security interest” means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) “Value” has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the “value” of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the “value” of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) (1) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than

1 the defendant who may have an interest in it. At least 30 days
2 before the hearing to determine whether the property should be
3 forfeited, the prosecuting agency shall send notice of the hearing
4 to any person who may have an interest in the property that arose
5 before the seizure.

6 (2) A person claiming an interest in the property shall file a
7 motion for the redemption of that interest at least 10 days before
8 the hearing on forfeiture, and shall send a copy of the motion to
9 the prosecuting agency and to the probation department.

10 (3) If a motion to redeem an interest has been filed, the
11 sentencing court shall hold a hearing to identify all persons who
12 possess valid interests in the property. No person shall hold a valid
13 interest in the property if, by a preponderance of the evidence, the
14 prosecuting agency shows that the person knew or should have
15 known that the property was being used in violation of, or
16 conspiracy to commit a violation of, subdivision (b) of Section
17 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,
18 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision
19 (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f,
20 subdivision (b) or (c) of Section 484i, subdivision (c) of Section
21 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e,
22 646.9, or subdivision (j) of Section 647, and that the person did
23 not take reasonable steps to prevent that use, or if the interest is a
24 security interest, the person knew or should have known at the
25 time that the security interest was created that the property would
26 be used for a violation.

27 (d) If the sentencing court finds that a person holds a valid
28 interest in the property, the following provisions shall apply:

29 (1) The court shall determine the value of the property.

30 (2) The court shall determine the value of each valid interest in
31 the property.

32 (3) If the value of the property is greater than the value of the
33 interest, the holder of the interest shall be entitled to ownership of
34 the property upon paying the court the difference between the
35 value of the property and the value of the valid interest.

36 If the holder of the interest declines to pay the amount determined
37 under paragraph (2), the court may order the property sold and
38 designate the prosecutor or any other agency to sell the property.
39 The designated agency shall be entitled to seize the property and
40 the holder of the interest shall forward any documentation

underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, or subdivision (j) of Section 647, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within

1 the jurisdiction of the juvenile court, is not likely to use the
2 property otherwise subject to forfeiture for future illegal acts.

3 (g) If the defendant is found to have the only valid interest in
4 the property subject to forfeiture, it shall be distributed as follows:

5 (1) First, to the victim, if the victim elects to take the property
6 as full or partial restitution for injury, victim expenditures, or
7 compensatory damages, as defined in paragraph (1) of subdivision
8 (e) of Section 502. If the victim elects to receive the property under
9 this paragraph, the value of the property shall be determined by
10 the court and that amount shall be credited against the restitution
11 owed by the defendant. The victim shall not be penalized for
12 electing not to accept the forfeited property in lieu of full or partial
13 restitution.

14 (2) Second, at the discretion of the court, to one or more of the
15 following agencies or entities:

16 (A) The prosecuting agency.

17 (B) The public entity of which the prosecuting agency is a part.

18 (C) The public entity whose officers or employees conducted
19 the investigation resulting in forfeiture.

20 (D) Other state and local public entities, including school
21 districts.

22 (E) Nonprofit charitable organizations.

23 (h) If the property is to be sold, the court may designate the
24 prosecuting agency or any other agency to sell the property at
25 auction. The proceeds of the sale shall be distributed by the court
26 as follows:

27 (1) To the bona fide or innocent purchaser or encumbrancer,
28 conditional sales vendor, or mortgagee of the property up to the
29 amount of his or her interest in the property, if the court orders a
30 distribution to that person.

31 (2) The balance, if any, to be retained by the court, subject to
32 the provisions for distribution under subdivision (g).

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate April 20, 2015. (JR11)**

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